

FOREWARD

ACREEMENT PROVIDING FOR EMPLOYMENT OF WATER COMMISSIONER AND
THE EMPLOYMENT OF COMMISSIONER.

The agreement providing for the employment of a water commissioner on the Uintah and Lake Fork Rivers dated December 19, 1956, by and between the United States of America acting through the Superintendent of the Uintah and Ouray Agency, Bureau of Indian Affairs, and the Associated Water Users of the Uintah and Lake Fork Rivers was extended for another year to provide for its implemented in 1985. This action was taken Feb. 9, 1986.

It was at this meeting that Bill Christensen, was employed as Water Commissioner for the insuing year and the presented budget totaling \$57,770.00 was approved. It was at this same meeting that I was selected as Water Commissioner on the Sandwash Creek and subsequently appointed same.

At this Feb. 9 1986 meeting the Bureau of Indian Affairs, Uintah and Ouray Agency was represented by Mr. Bart Rennie and Mr Sonny Van. The Associated Water Users Association was represented by the Executive Committeemen..

PRELIMINARY STATEMENT

Continued division of the cost of water distribution service on the Uintah and Lakefork Rivers, one-half to the "United States" and one-half to the "Associated Water Users," as provided for in the 1940 Agreement between the two parties, prevented renewal and extension of that agreement to cover the 1957 operations. As a new agreement was needed, it was also decided that the expense necessary to provide such distribution service should be apportioned among all of the appropriators served from these sources of supply, on the basis of water diverted by them, rather than on the crop-acre basis heretofore used in dividing the Associated Water Users' part of the expense among its members. The modified agreement was duly prepared and executed and appears in full, following this statement.

AGREEMENT FOR APPOINTMENT OF WATER COMMISSIONER

ON THE UINTAH AND LAKEFORK RIVERS

This agreement made and entered into this 19th day of December 1956, by and between the United States of America acting herein by John O. Crow, Superintendent of the Uintah and Ouray Agency, and as such in charge of the Uintah Indian Irrigation Project, hereinafter referred to as United States, and the Associated Water Users of the Uintah and Lakefork Rivers, acting herein through its Executive Committee for and on behalf of the defendant water users in cases of United States of America vs. Dry Gulch Irrigation Company, et al, Number 4418, and United States of America vs. Cedarview Irrigation Company, et al, Number 4427, both in the United States District Court for the District of Utah, hereinafter for brevity referred to as the Associated Water Users.

Whereas, the Federal Court of the District of Utah entered final decrees in both of the above entitled cases and appointed a Water Commissioner to distribute the waters and enforce the decrees for several years thereafter, and

Whereas, the said court prior to the irrigation season of 1931, made and entered an order vacating the provisions of the said decree relating to the appointment of a Water Commissioner and making it necessary for the parties thereto to arrange for distribution of water from the Uintah and Lakefork Rivers by agreement or otherwise, and

Whereas, from year to year since that time, the said parties have employed a Water Commissioner to regulate the use of water in accordance with the provisions of the said Federal Court Decrees, during the period 1931 to 1939 inclusive, by verbal agreement, and thereafter, under specific agreement made and entered into on the 18th day of March 1940, duly renewed by the parties thereto and expressed in writing, and

Whereas, the parties to the said 1940 agreement for the appointment of a Water Commissioner on the Uintah and Lakefork Rivers consider it advisable that, an orderly and economical distribution of the water be duly provided for and continued, and in order to effect certain changes, particularly in adjustment of the costs incurred, a new agreement is needed;

Now therefore, in consideration of the premises and in order to provide for the orderly diversion and distribution of the waters of the Uintah and Lakefork Rivers and their tributaries for the year 1957 in accordance with the aforesaid decrees of the United States District Court for the District of Utah and with existing water rights as they may be otherwise properly determined, the parties hereto agree as follows:

1. That the Associated Water Users of the Uintah and Lakefork Rivers are an unincorporated association composed of representatives of water users who were parties to the aforesaid decrees, empowered and authorized by said water users to act through its Executive Committee in all matters relating to the selection of a Water Commissioner and the distribution of water under and in accordance with existing rights of the parties as in said decrees established and provided and particularly that they were authorized to make the agreement, all as evidenced by the Articles of Agreement of the Associated Water Users of the Uintah and Lakefork Rivers, a copy of which is attached hereto as Exhibit "A" and made a part hereof.

2. That the parties hereto shall appoint and employ a Water Commissioner for one year, beginning January 1, 1957, and annually thereafter, provided this agreement shall have been renewed by the mutual consent of said parties expressed in writing. The appointment of the Commissioner for any year shall be made by December 1st of the preceding year.

3. The said Commissioner shall be paid for his services and expense the sum designated in the approved budget for the calendar year as hereinafter authorized in Paragraph 5, which said sum shall cover his travel and other personal expenses.

4. The Commissioner is hereby authorized:

(a) To appoint such deputies and gage observers as in his judgment are necessary to economically and effectually measure and distribute the waters of said streams, and to employ necessary clerical and stenographic assistance.

(b) To purchase water level recorder supplies, gage books, stream discharge sheets, stationery and office supplies and to publish required sheets.

(c) To provide office quarters including heat and light for the same.

(d) To comply with the Workmen's Compensation Act of the State of Utah and also the Federal Insurance Contributions Act.

5. The foregoing items of expense shall be incurred by the Water Commissioner only to the extent possible within the budget which shall be submitted by him not later than March 1st following his appointment, and which, when approved by the parties to this agreement shall become his budget for the year. In the event work or services are required during the year in excess of the budget, written approval must be obtained from the parties hereto prior to incurring any obligation therefor.

6. The Commissioner's approved budget shall be for an amount deemed sufficient to meet all costs for the current year's water distribution service, the

payment of which shall be apportioned to the parties hereto in proportion to the total acre feet of water diverted to the lands of the United States Uintah Project and the lands of the Associated Water Users of the Uintah and Lakefork Rivers, and or others as reported in the Annual Water Commissioner's Report for the previous year.

7. In order that the Commissioner may be paid his salary and expenses, including the salary of his employees, the parties hereto shall make payments to him as follows:

(a) The United States shall pay one-eighth of the total annual Indian Service share of the approved budget each month of the irrigation season of eight months, the first payment to become due March 1st of each current year; provided that the final payment shall not be made until the total actual costs for the year are known and such final payment shall be in an amount sufficient to cover its share of the adjusted unpaid balance--the actual costs apportioned to the respective parties hereto being in proportion to the total acre feet of water diverted to each during the current year's distribution of the water supply. And provided further that the foregoing payments are payable and shall be made in accordance with Federal Government fiscal policies and the rules and regulations of the General Accounting Office.

(b) That part of the Commissioner's costs to be paid by the Associated Water Users of the Uintah and Lakefork Rivers shall be made in three installments to be due and payable as follows: Forty percent (40%) of its share of the total annual budget on March 1st of the current year; forty percent on July 1st and the remainder of such total costs as adjusted for the year shall be paid upon notice from the Water Commissioner as soon as the total costs for the year are ascertained and adjusted; provided that if it is desired by the Associated Water Users as such, and its respective member corporations, associations and individuals, that notices of the payments due the Commissioner, proportioned to the members severally, may be mailed to them by the Commissioner and the accounting details modified to conform to such changes.

8. The Commissioner is authorized to require all water users to install and maintain such diversion structures, gauging stations and necessary measuring devices as he deems necessary for properly measuring and distributing the water of said rivers. However, where such devices are not installed and an estimate by the Commissioner or his Deputy is necessary to establish the quantity of water diverted, such estimate shall be final for the purpose of the Commissioner's report.

9. In distributing and regulating the use of water, the Water Commissioner is authorized and directed to:

(a) Withhold water from either or any party who has failed to make the payments above provided for within ten days after notice by the Commissioner that they are in default. Provided, however, that the United States shall not be considered in default as long as its payments are made in accordance with the Government Fiscal Policy and Regulations of the General Accounting Office. Provided further that in the event any water user not represented by the

parties hereto fails to pay his per acre share of Water Commissioner costs, or if he takes water out of turn or when his priority is not in the stream, the Water Commissioner shall report the facts to the parties hereto fully and promptly in order that they may take such action as they deem proper in the circumstances.

(b) As to all water users represented by the parties hereto, the Commissioner is authorized and directed to shut off and withhold water from any person wasting it or not using it for beneficial purposes.

(c) Shut off and withhold water from all users who do not have proper regulating and measuring devices.

10. The Water Commissioner is authorized and directed to insist upon and require all reservoir owners who are represented by the parties hereto, to permit normal flow to pass through their reservoirs at all times to the extent required to meet the direct diversion rights below such reservoirs. In the case of all other such reservoir owners, if any, on said river, the Commissioner is authorized and directed to demand that they install, operate and properly maintain such gauging stations and measuring devices as will permit the accurate determination of the amount of water stored and the amount of stored water discharged into the stream, and in the event any such reservoir owner or owners fail or refuse to comply with such demands, he shall promptly report the matter to the parties hereto, for such action as they or either of them may deem advisable.

11. The basis for the proper diversion of said waters for such irrigation season shall be the cropped acreage as required to be submitted to the Commissioner for the previous year except as modified by the additions or subtractions thereto submitted to him by certificate not later than May 1, of the ensuing irrigation season. Provided, that each year the water users shall submit their certification of the crop acreage by legal subdivisions under each canal system used for the past year, not later than December 1; Provided further, that if as between certain water users other methods have been agreed upon, then the Water Commissioner shall permit delivery upon such agreed basis so long as it does not interfere with the satisfaction of priorities.

Provided further, that if a cropped acreage report is not presented to the Water Commissioner by December 1, that he is authorized and directed to withhold water from any such party, water user, or company until such report is made.

Provided further, that any party who has not made a report by December 1, the Commissioner is authorized to gather such data and obligate the cost of such work against the party receiving the benefit.

Provided further, that if a crop report is not submitted, the Commissioner shall make an estimate of the amount of water delivered and the amount of land cropped and his estimates shall be the basis for payment of Commissioner's expenses and water delivery the following year.

12. If it shall appear that water can be distributed more efficiently through other canals or laterals than those through which it has been distributed in the past and thereby effect a saving of water and at the same time meet the full necessities of the users, and without damage or expense to owners of said canals, the said Commissioner is authorized as an emergency measure only to so distribute said water.

13. The Commissioner shall give due regard to needs for culinary water and stock water, but shall allow water for such uses only upon consent of the appropriator who may be called on to provide such water.

14. The delivery of water to the respective parties hereto and to the appropriators whom they represent, shall be upon a demand basis, provided that either party, or any party represented by them, may prepare and present to the Commissioner a duty of water schedule which shall specify the flow required during set periods of time to supply the total seasonal quantity of water to which the said party is entitled if provided by the supplying stream and or other sources of supply.

15. In the event a water user on either of said rivers makes an agreement with one or more of the parties hereto or those represented herein, wherein it is agreed by the parties thereto that a temporary exchange of water shall be made, either by exchanging stored water for normal flow or water from some other source for water then available to the parties hereto as represented herein, from the Uintah and Lakefork Rivers, or from their tributaries under their respective priorities, the Water Commissioner shall recognize said such temporary exchange agreement, and permit or cause it to be consummated in accordance with the agreement of the parties, so long and only so long as it does not interfere with or violate the rights of others. Any party hereto who makes such an agreement shall promptly furnish the Water Commissioner with a certified copy thereof.

16. The said Commissioner is authorized to have tabulated and analyzed, daily sheets showing the quantity of water distributed to the respective users. At the close of the irrigation season, the said Commissioner is authorized and directed to prepare a report showing the daily quantity of water distributed to the respective users, the conditions under which said water was used, the flow of the various streams from which said water was diverted, and a tabulation and analysis of the hydrologic data collected. He shall supply a reasonable number of copies thereof to the parties thereto.

17. In the event the Commissioner encounters problems which he believes require legal assistance in his behalf, he shall report the matter fully and promptly to the parties hereto, who will consult with him and each other, and advises him what, if any, action they want taken, and arrange for such assistance if they deem it advisable that action be taken.

18. It is understood and agreed that this agreement shall not constitute a binding precedent on any of the parties hereto, and that it shall not constitute a waiver of any existing rights belonging to either party hereto or any party represented by them.

19. It is agreed that if this agreement shall be renewed from year to year as provided for herein, the Superintendent or other designated representative of the United States shall meet with the Executive Committee of the Associated Water Users, at a time and place to be agreed upon for the purpose of appointing the Commissioner, fixing his compensation, fix a budget for the Commissioner's expense, and make such other arrangements as may be necessary regarding the duty of water, submissions of crop reports, and other matters which may properly come before them in joint capacity.

20. No member of, or delegate to Congress, or resident Commissioner shall be admitted to any share or part of this contract, or to any benefit that may

arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation for its general benefits.

21. Where the operations of this contract extend beyond the current fiscal year the contract is made contingent upon Congress making the necessary appropriations for expenditures hereunder after such current year shall have expired. In case such appropriation as may be necessary to carry out this contract is not made, the Associated Water Users hereby release the United States from all liability due to the failure of Congress to make such appropriation.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

1. UNITED STATES OF AMERICA

By: John O. Crow
John O. Crow, Superintendent

2. ASSOCIATED WATER USERS OF UINTAH AND LAKEFORK RIVERS

By: William H. Crozier
William H. Crozier, Chairman

Lee Angus
Lee Angus, Secretary

Leo H. Haueter
Leo H. Haueter, Member

William Chandler
William Chandler, Member

W. D. Morrill
W. D. Morrill, Member

Ray Oman
Ray Oman, Member